

LABOUR DEPARTMENT

The 17th December, 1982

No. 9(1)-82-6Lab/12165.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Haryana Roadways, Karnal.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL, TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 72/1980

between

SHRI BALBIR SINGH, WORKMAN AND THE MANAGEMENT OF M/S HARYANA ROADWAYS,
KARNAL

Present—

Shri D. P. Pathak, for the workman.
Shri S.N. Gaur, for the management.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri Balbir Singh and the management of M/s Haryana Roadways, Karnal, by order No. ID/KNL/95-80/57444, dated 21st November, 1980, to this Tribunal, for adjudication in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Balbir Singh was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleadings of the parties the following issues were framed by my order dated 11th February, 1981:—

- (1) Whether the termination of service of Shri Balbir Singh was justified and in order?
- (2) Relief.

And the case was fixed for the evidence of the management who examined Shri Dharam Singh, Clerk, MW-1 and Shri S.N. Gaur, Enquiry Officer, as MW-2, The concerned workman examined himself as WW-1 and Shri Virbhan, Establishment Assistant of the management, as WW-2. Argument of the management heard. The workman was called upon to submit his written argument but no argument received.

MW-1 deposed that he had brought enquiry file. The workman was issued charge-sheet Ex. M-1. He was supplied copy of allegations along with Ex. M-1. The workman replied charge-sheet,—vide Ex. M-2. The management considered the same and appointed Shri S. N. Gaur, legal adviser as Enquiry Officer,—vide order Ex. M-3. Enquiry Proceeding was Ex. M-4. He worked as writer in the domestic enquiry. The workman participated in the enquiry and was allowed to cross-examine the witnesses. He had also appeared as his own witness. The General Manager passed order Ex. M-6 on the receipt of the enquiry report and show cause notice was issued to the workman who replied,—vide Ex. M-8. The General Manager considered the same and also allowed personal hearing. He passed order Ex. M-9. In cross-examination, he admitted that the charge against the workman was remaining absent without leave. He could not say if 40 days leave was at the credit of the workman. He denied that he himself held the domestic enquiry. He remembered that some workers had been dismissed on the charge of absence. MW-2 deposed that under order Ex. M-3 passed by the General Manager, he was appointed enquiry officer in charge-sheet Ex. M-1. He had held domestic enquiry Ex. M-4. The workman participated and cross-examined the management's witnesses. He was allowed opportunity of defence. He made his statement in his defence. He had also given statement Ex. M-6 in writing that he was not to lead any other defence evidence. The workman had signed the enquiry proceeding. The enquiry proceeding was written on his dictation by the clerk. The enquiry finding Ex. M-6 was submitted. The workman was found guilty. In cross-examination he admitted that the duty inspector had his office at sub-depot, Panipat. He also admitted that leave applications for the Sub-Depot were submitted to the Duty Inspector. He was not aware if the applications were entered into any register. The Duty Inspector had no power to pass order on the applications. He did not know if all the applications were sent to the General Manager. The enquiry was held by him in his office but the workman had requested that the enquiry be held in Panipat Sub-Depos. He denied that the workman was stopped to cross-examine the management witnesses. He was not aware if 40 days leave was at the credit of the workman. He denied that the workman had protested during the enquiry.

The concerned workman deposed that he was in the employment for the last 7-8 years. His work was satisfactory. He had fallen sick during the months of August, September and October, 1978. Whenever he recovered he attended his duties. He used to submit his application to the Duty Inspector. He did not remember the dates of the applications. He had submitted applications on 12th, 17th and 25th of August, and one application for leave for the period 6th September, 1978 to 7th October, 1978. He had submitted his leave application personally to the Duty Inspector. He was not aware if leave was sanctioned to him. No register was maintained by the Duty Inspector for record of leave applications. He further stated that he had received enquiry notices. He had received show cause notice. He participated in the enquiry. Enquiry was held by Shri Dharam Singh, Clerk. The Enquiry Officer had remained there 4-5 minutes. His statement was not recorded correctly. He was not afforded opportunity of defence. He had raised objections before the General

Manager during the enquiry proceedings but it was not accepted. He had also produced medical certificate. He had leave at his credit. He was victimised. He had picked up a quarrel with some relations of the Duty Inspector. In cross-examination, he had received a telegram for joining duty. He admitted his signature on Ex. M-11. He admitted that he had made a statement during the enquiry and had appended his signature underneath the statement. He admitted that he had submitted medical certificates, Ex. M-12 to M-16 in the enquiry. He had obtained the certificates on a single day from the Hospital. It was a private hospital. He admitted his signature on Ex. M-5 and M-4. He had never made a complaint in writing to the General Manager that the Duty Inspector had rebuked him during the enquiry. WW-2 deposed that he had brought summoned record. It did not contain leave record which was in the service book. The service book was not summoned by the workman. The workman had not submitted any leave application in the year 1978. A leave application was first received by the duty inspector who after his recommendation to the Traffic Manager and record was kept in the Establishment Section. He denied that he had not brought leave applications of the concerned workman. In cross-examination, he replied that the workman was absent without leave from 20th December, 1976 to 16th January, 1977. He was censured by order dated 1st March, 1977 and absence was converted leave without pay. He was sanctioned leave with pay from 2nd March, 1977 to 9th March, 1977, and 16th April, 1977, to 30th May, 1977. He was again censured. He remained absent from 16th June, 1978 to 28th July, 1978 and punishment of stoppage of one increment was awarded to him. Absence was converted into leave without pay. WW-3 Lady Doctor Ansuya Chaudhry stated that she was G. A. M. S. with registration No. 4037. She knew the concerned workman. He had been under her treatment. Certificates Ex. M-12 to M-16 were issued by her. He was suffered from typhoid which further turned into asthma. She had issued fitness certificate to him. In cross-examination she replied that she had issued certificate Ex. M-13 and M-12 on 19th September, 1978, certificate Ex. M-14 on 6th September, 1978, Ex. M-15 and M-16 on 12th August, 1978. Certificate Ex. M-12 and M-13 were foils of the same certificate and so were Ex. M-15 and M-16. The workman was not indoor patient as she had no arrangement for the same.

I have gone through the enquiry file and find that the workman was issued charge-sheet Ex. M-1 along with statement of allegations. He was also supplied with list of witnesses. The workman replied,—vide Ex. M-2. Enquiry was ordered,—vide Ex. M-3 by the General Manager. Enquiry proceeding was Ex. M-4 in which the absence of the workman was proved. Signature of the workman appeared underneath the proceeding. The workman had also made separate application Ex. M-5 in which he wrote to the Enquiry Officer that he did not want to examine any other defence witnesses. I find that enquiry report Ex. M-6 was based upon the evidence. Termination order Ex. M-9 was detailed order in which there was mention of the past record of the workman. The management has proved that the workman was habitual absentee. At the previous occasions, he was punished thrice and his absence was converted into leave without pay. The workman had admitted that he was called upon to join duty by a telegram which he replied,—vide Ex. M-11. The workman had, however, pleaded his sickness in the applications and I find a report that the workman was doing his own private business. Therefore, the medical certificate should be sought from him. As regards, the medical certificate from Pvt. Lady Doctor, the enquiry officer has rightly commented on the same in his enquiry report and not relied upon the plea, the charge of absence on the pretext of illness was serious type of mis-conduct because it could hamper smooth working of the management. I am fortified of my view by ruling reported in 1977 Volume-3 F.L.R. page 318. It was held that "the act of the employee in malingering i. e. feigning sickness in order to avoid his duty amounts to gross violation of duty." In case of quantum of punishment, I find no reason of interference because the past record of the workman was also not clean. He had been punished a number of times on the same charge. In this circumstance, I find the action of the management to be justified.

While answering the reference, I pass my award that the workman is not entitled to any relief.

Dated the 12th November, 1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

* Endorsement No. dated

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

LABOUR AND EMPLOYMENT DEPARTMENT CORRIGENDUM

The 14th February, 1983

In Haryana Government, Labour and Employment Department, notification No. 10(40)-82-3Emp, dated the 16th July, 1982, published in Haryana Government Gazette, Part I, dated the 24th August, 1982, for "state of Haryana from the" read "State of Haryana from the provisions of the said Act, namely:—

M. KUTTAPPAN,
Commissioner and Secretary, to Government Haryana,
Labour and Employment.